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RESPOND TO:
SACRAMENTO

File No. 6223

August 17, 2001

VIA FEDERAL EXPRESS

Anthony Swoope
Administrator
Apprenticeship Training,
Employer and Labor Services
200 Constitution Avenue, N.W.
Washington, DC 20210

Re: California Apprenticeship Program

Dear Mr. Swoope:

The purpose of this letter is to alert you to a major case in California in which the California Apprenticeship Council ("CAC") has acted contrary to the provisions of the National Apprenticeship Act and to elicit the support of your agency in legal proceedings we have instituted to overturn the CAC's Decision. My client, the Plumbing, Heating, Cooling Contractors of California, will be presenting a copy of this letter and the accompanying papers to Secretary Chau in a meeting they have scheduled for Tuesday, August 21, 2001 in Southern California.

By way of background, the Plumbing, Heating, Cooling Contractors ("PHCC") sponsor a plumbers apprenticeship program in California, not affiliated with any union. The program was initially established in the Sacramento area, and approved by California's Division of Apprenticeship Standards ("DAS") and the CAC in 1994. Based on tremendous demand from its employer members throughout the state, PHCC decided to expand the area in which it recruits and trains apprentices state-wide. DAS advised that it could approve such an expansion as a revision to PHCC's existing program standards. Accordingly, PHCC filed the necessary papers with DAS, and the Chief of DAS approved the revisions in January, 1998. Since that time, PHCC has recruited and trained apprentices in locales throughout the state and is now the second largest program in the state (in terms of indentured apprentices).

A plumbers union program in Fresno challenged the DAS approval of PHCC's program before Steve Smith, the Director of California's Department of Industrial Relations ("DIR") as well as the CAC. A hearing was held and, on December 11, 2000,

COOK, BROWN & PRAGER, LLP

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Anthony Swoope
August 17, 2000
Page 2

Smith issued his decision. He concluded that despite the past policy of DAS to process expansions of existing programs as revisions, such a change in area of recruitment and training was more akin to a new program. And, since new program approval procedures were not used, the state-wide program was invalid. He ordered that PHCC cease recruiting outside of Sacramento, and not indenture any new apprentices that reside outside of Sacramento. As you may know, California Labor Code section 3075 was amended in 2000, making it virtually impossible for PHCC to obtain state-wide approval at this juncture.

PHCC appealed Smith's decision to the CAC. After briefs were filed, the CAC issued its decision on July 26, 2001, affirming Smith's Decision in its entirety. Amazingly, five members of the CAC participated in the decision despite their membership in the California Apprenticeship Coordinator's Association ("CACA"), a union association which acted as *amicus curia* in favor of Fresno Plumbers JATC and against PHCC in both the DIR hearing and the CAC appeal. These commissioners ignored our request that they recuse themselves due to the obvious conflict.

Earlier this week, we filed a Petition for Writ of Mandate with the Sacramento Superior Court seeking an order vacating the CAC Decision. We are also set to appear before the assigned judge, Ronald Robie, on Tuesday, August 21, 2001 at 1:30 p.m. on an Application for Temporary Stay of the CAC Decision pending final judgment on the Writ.

I am forwarding herewith copies of all the papers in this action, including Petition for Writ, Application for Temporary Stay, Points and Authorities in Support of Stay, and Declarations in Support of Stay. The points and authorities and declarations will shed additional light on the factual and legal infirmities inherent in the CAC Decision.

In a nutshell, this case represents a concerted effort by unions, with the aid of Gray Davis' political appointees (e.g., Smith and the CAC) to reduce and ultimately eliminate all construction industry apprenticeship programs that are not sponsored by AFL-CIO unions. A number of non-union programs achieved DAS approval for state-wide expansion in the last decade, including plumbing (PHCC), roofing (IRRC), electrical (WECA), sheet metal (ACTA), and various other programs sponsored by Associated Builders and Contractors. Each of these programs are now at risk of disestablishment by CAC, since they were expanded, with DAS approval; as revisions

COOK, BROWN & PRAGER, LLP

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Anthony Swoope
August 17, 2000
Page 3

of existing programs. Thus, political appointees in California are moving to undermine the fundamental policies established in the National Apprenticeship Act to promote apprenticeship opportunities while protecting the interests of apprentices. Thousands of apprentices are or will be adversely affected, and thousands of opportunities for apprenticeship will be lost.

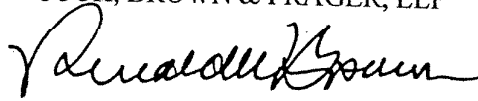
In light of CAC's actions, which are contrary to federal policy, we request that your Agency intervene in our Superior Court Writ action as an "interested party," so the Court may be apprised of the federal view of the state's action. In the alternative, we would invite your Agency to consider filing an *amicus curia* brief with the court.

The hearing on our writ will probably not occur sooner than two months from now. We expect the court to set a hearing date when we appear for a stay on August 21. The court's rules call for opening briefs to be filed 45 days before the hearing, with the opposition filed 25 days before and the reply 15 days before. We will send you a copy of the Notice of Hearing once it is set by the court. I would be happy to provide you with anything further you may need to facilitate your participation in this case.

Thank you for your attention to this matter.

Sincerely yours,

COOK, BROWN & PRAGER, LLP



RONALD W. BROWN

RWB/nk
Enclosures
cc: PHCC w/enc.
(for Secretary Chau)

GRAY DAVIS, Governor

STATE OF CALIFORNIA

DEPARTMENT OF INDUSTRIAL RELATIONS
CALIFORNIA APPRENTICESHIP COUNCIL
455 GOLDEN GATE AVENUE, 8TH FLOOR
SAN FRANCISCO, CA 94102
(415) 703-4920



ADDRESS REPLY TO:
P.O. Box 420603
San Francisco, CA 94142

August 8, 2001

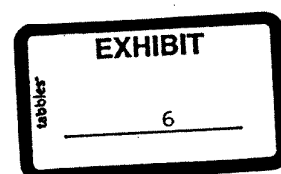
PHCC #19810
1911 "F" St.
Sacramento, CA 95814

Gentlemen:

Enclosed please find a copy of the Appeal Panel Decision for Case No. 98-17, Fresno Area Plumbers, Pipe and Refrigerator Fitters JATC vs. PHCC of the Greater Sacramento Area and PHCC of the Greater Sacramento Area Plumbers Unilateral Apprenticeship Committee. It was voted on and accepted by the Commissioners of the California Apprenticeship Council at their July 26, 2001 meeting.

Sincerely,

Bryan Goyette
Staff Aide



BEFORE THE
CALIFORNIA APPRENTICESHIP COUNCIL

FRESNO AREA PLUMBERS, PIPE AND
REFRIGERATOR FITTERS JATC,
Charging party, Appellee,

Case No. 98-17

DECISION

v.

PHCC OF THE GREATER SACRAMENTO AREA
and PHCC OF THE GREATER SACRAMENTO
AREA PLUMBERS UNILATERAL
APPRENTICESHIP COMMITTEE,

Respondents, Appellants..

FACTS AND PROCEDURAL HISTORY

In December 1993, the Division of Apprenticeship Standards ("DAS") approved an application by the Plumbers Unilateral Apprenticeship Committee of the Plumbing, Heating and Cooling Contractors of the Greater Sacramento Area ("PHCC") to train apprentices. PHCC's standards stated that the program would operate in Sacramento County and that related and supplemental instruction would be provided by the San Juan Unified School District. The program was approved by the Council on July 29, 1994.

Thereafter, PHCC recruited a substantial number of apprentices outside Sacramento County. PHCC provided related and supplemental instruction to those apprentices by school districts other than the San Juan Unified School Districts.

On January 22, 1998, DAS approved a revision to PHCC's standards which allowed PHCC to recruit outside Sacramento County.

The Fresno Area Plumbers, Pipe and Refrigeration Fitters JATC ("Fresno JATC") filed a complaint with the Director of the Department of Industrial Relations ("DIR") challenging PHCC's recruitment of apprentices outside Sacramento County and DAS' 1998 approval of the revised standards.

1.

DECISION

1 Additional facts are stated in the Director's decision. The Council upholds each of the
2 Director's factual findings.

3 The Director held an evidentiary hearing on the complaint on May 17 and July 19, 2000.
4 On December 11, 2000, the Director issued a decision which ordered PHCC to cease recruiting
5 or enrolling apprentices outside Sacramento California. The Director decided that it would
6 inequitable to require those apprentices whom PHCC had already recruited outside Sacramento
7 to transfer to other programs. The Director declined to decide whether DAS was empowered to
8 approve the 1998 revisions to PHCC's standards and instead referred that issue to the Council for
9 decision.

10 The Director's decision was appealed to the Council by both PHCC and the Fresno
11 JATC. PHCC challenges that part of the Director's which limits PHCC's recruitment. The
12 Fresno JATC appeals that part of the Director's decision which allows PHCC to retain its
13 apprentices.

14 The appeal was assigned to a panel consisting of Max Turchen, Carole Cresci Colbert and
15 Brad Plueger. The Council received extensive briefing from the parties and from the Division of
16 Apprenticeship Standards.

17

18 DECISION

19 1. An evidentiary hearing on these appeals is not necessary because the Director's decision
20 is based on an evidentiary hearing, because the parties submitted extensive briefs and because
21 the issues to be decided are primarily legal.

22 2. The Director concluded that the 1998 revisions to the PHCC standards constituted a
23 "new" program because the revisions changed the geographic area of the program, added new
24 sources of related and supplemental instruction, changed the apprentice wage structure and
25 reduced the required number of instruction. The Council agrees that the revisions constituted a
26 "new" program for these reasons and for the additional reason that PHCC recruited apprentices
27 outside Sacramento County under a different name.

28

2.

DECISION

1 Regulation 212.2 sets forth the procedure for approval of new programs. DAS did not
2 follow the this procedure in its 1998 approval of the PHCC revisions. The approval therefore is
3 overturned because it is invalid. PHCC accordingly is authorized to operate its program only
4 under its original standards as approved by the Council on July 29, 1994.

5 3. With respect to those apprentices whom PHCC recruited outside Sacramento County
6 before the Director's decision, the Council agrees with the Director that it would be inequitable
7 to transfer those apprentices to other programs, provided that those apprentices are being trained,
8 educated and employed in accordance with law. The Council requests DAS to conduct an
9 investigation of the training, educating and employment of those apprentices. The Council will
10 retain jurisdiction over the question of what to do about those apprentices pending the results of
11 DAS' investigation. If the investigation demonstrates that those apprentices are not being
12 lawfully trained, educated or employed, the Council will issue further orders as necessary.

13 4. PHCC's appeal was timely under Regulation 203.


14 5. The Director's decision is upheld in its entirety except as stated above in paragraph 3 of
15 this decision.

16
17 DATED: 7.24.01

18 
19 CHAIRMAN, CALIFORNIA APPRENTICESHIP COUNCIL

20 RECOMMENDATION

21 We recommend that the Council adopt the above decision.

22
23 
24 Max Turchen

25 
26 Carole Cresci Colbert

27 
28 Brad L. Plueger

3.

DECISION

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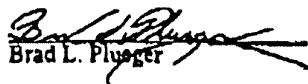
18
19 CHAIRMAN, CALIFORNIA APPRENTICESHIP COUNCIL

20 RECOMMENDATION

21 We recommend that the Council adopt the above decision.

22
23 _____
24 Max Turchen

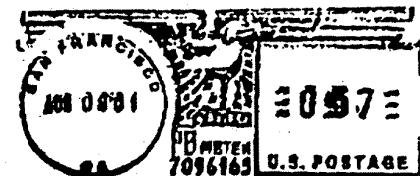
25 _____
26 Carole Cresci Colbert

27 
28 Brad L. Plummer

3.

DECISION

STATE DEPARTMENT OF INDUSTRIAL RELATIONS
DIVISION OF APPRENTICESHIP STANDARDS
P.O. Box 420803
SAN FRANCISCO, CA 94142-0803



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